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**Model California Ordinance for**

**Reducing Storefront   
Window Signage**

(with Annotations)

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Developed by ChangeLab Solutions

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## **Introduction**

This Model Ordinance offers a policy intervention to reduce excessive storefront window signage. Communities may want to reduce storefront signage for a number of reasons, including to improve public safety, decrease visual clutter, and preserve the aesthetic character of communities. California Business and Professions Code section 25612.5(c)(7) (California’s Lee Law or the Lee Law) currently limits the amount of advertising and other signs alcohol retailers may have on their storefront windows. This Model aims to strengthen the Lee Law’s signage provision by reducing the amount of allowable window signage, expanding the restriction to *all* retailers, and providing local authorities greater power to enforce such restrictions.

The current version of this Model Ordinance (revised in March 2016) acknowledges the Supreme Court case, *Reed v. Town of Gilbert*, which was decided after the original Model Ordinance was published. As explained in the footnote on page 4, however, *Reed* does not change any of the Model Ordinance’s provisions, which are already content neutral.

This Model Ordinance has wide-ranging community benefits that will appeal to many different stakeholders. Neighborhood watch groups, environmental organizations, and community preservation coalitions may be interested in the potential to improve public safety, preserve the aesthetic character of a community, and promote a community’s long-term economic viability by reducing visual clutter. Public health advocates may also support limitations on signage because such restrictions could affect the amount of tobacco, alcohol, and other signage on storefront windows. Under the First Amendment, however, the Model Ordinance cannot seek to reduce specific types of signage based on its content. As will be discussed in greater detail below, the ordinance should instead focus on traditional police power rationales, such as improving the safety and aesthetics of a community.

## **Background: Storefront Advertising Restrictions**

**California’s Lee Law**

Named after Barbara Lee—the then-State Assemblywoman who sponsored the legislation[[1]](#endnote-2)—the Lee Law was enacted following the 1992 Los Angeles riots. In response to the destruction of nearly 200 liquor stores, the Lee Law established comprehensive public health and safety standards for all alcohol retail stores in California.[[2]](#endnote-3) Among other provisions, it requires the removal of litter and graffiti on the premises, that the exterior be adequately illuminated, and that No Loitering and No Open Alcoholic Beverages signs be posted.

The Lee Law also contains a window signage provision that prohibits alcohol retail stores from covering more than one-third (33 percent) of the square footage of windows and clear doors with signs of any sort.[[3]](#endnote-4) The placement of signs and advertisements must allow law enforcement personnel a clear and unobstructed view of the interior of the premises.

California’s Alcoholic Beverage Control Department (ABC) is the primary agency that can impose fines or suspensions for Lee Law violations. The only instance in which local law enforcement agencies may enforce the Lee Law is for criminal offenses. For practical reasons, however, this rarely happens.[[4]](#endnote-5) Accordingly, the most effective way to ensure compliance is through civil sanctions (e.g., fines), which local governments may impose only if they enact their own signage ordinance. Recognizing both the importance of storefront signage regulations and local governments’ unique capacity to address community needs, communities are considering adopting their own window signage provisions that go further than the Lee Law.

**Local Signage Laws**

Since the Lee Law’s enactment, a number of cities and counties have adopted window signage provisions. Many have reduced the Lee Law’s 33 percent limit by restricting the allowable space for signage to 25 percent,[[5]](#endnote-6) 15 percent,[[6]](#endnote-7) or even 10 percent[[7]](#endnote-8) of each window’s square footage. The laws also vary in their applicability: some apply to all commercial establishments in the community, while others apply only in certain districts or to specific types of stores, such as tobacco retailers.[[8]](#endnote-9) As will be discussed in greater detail below, communities that limit these restrictions to specific types of stores or special districts should consult their local government attorney and/or ChangeLab Solutions to ensure their requirements do not impermissibly discriminate against certain types of messages.

As noted above, local storefront signage laws are particularly important because they allow local jurisdictions to respond to their community’s concerns and needs, tailor signage restrictions accordingly, and directly enforce such provisions.

## **Legal Issues**

Two potential legal issues may arise with respect to this Model Ordinance.

### **Preemption**

Some local jurisdictions may be worried that federal or state law prohibits (or preempts) their ability to enact a window signage restriction. California cities and counties, however, are not preempted from enacting their own signage provisions.

Under their traditional police powers, local governments have the authority to regulate signage, provided that the state has not preempted them. The Lee Law expressly allows “the adoption and implementation of more stringent local regulations that are otherwise authorized by law.”[[9]](#endnote-10) Accordingly, cities or counties may implement more stringent signage restrictions than those set out by the Lee Law.

### **First Amendment**

Communities may also be concerned that a signage restriction could violate the First Amendment. The First Amendment to the U.S. Constitution prohibits the government from enacting laws that abridge the freedom of speech, including commercial speech or advertising. To avoid challenges on First Amendment grounds, communities should ensure their regulation does not restrict the content or message of the signs subject to regulation.[[10]](#footnote-2) Generally, local jurisdictions have greater power to impose limitations on signage when they do so in a content-neutral manner—that is, when the limitations apply regardless of the sign’s message. A regulation imposing limits on signage that refers to specific content or messages (e.g., by singling out tobacco advertisements) has a much greater likelihood of being challenged on First Amendment grounds.[[11]](#endnote-11)

Communities should therefore adopt regulations, such as this Model Ordinance, that govern elements like the placement of signs, their dimensions, or their construction, and not the *content* of the advertising. Although such regulations may disproportionately affect certain types of signage (i.e., the types of advertisements that tend to appear in store windows) more than others, they should withstand constitutional scrutiny as long as they advance an important government interest (e.g., public safety or aesthetics) and are not overly restrictive (e.g., do not ban *all* storefront signage).[[12]](#endnote-12)

## **Adopting the Model Ordinance**

This Model Ordinance prohibits retail stores from covering more than 15 percent of the square footage of their storefront windows and transparent doors with signage of any sort.[[13]](#endnote-13) The exact percentage, as well as the rest of the model language, may be tailored to fit the specific needs of a community. The comments provide additional information and explanation. In some instances, blanks have been left (e.g., [ \_\_\_\_ ]) for the language to be customized accordingly. In other cases, the Model Ordinance offers options (e.g., [ option one / option two ] ). When considering these options, the local jurisdiction should balance the community benefits against practical and political considerations.

A community can implement a window signage restriction in numerous ways. Many local jurisdictions already have signage provisions—typically in their zoning or municipal code—that impose certain restrictions on window signage. Accordingly, a local jurisdiction should first determine whether a local signage regulation is already in place. If one exists, the jurisdiction should ensure the Model Ordinance language is incorporated into and consistent with its established regulations.

Communities that require tobacco retail licensing (TRL) may instead elect to include the requirements set forth in this Model Ordinance as plug-in policy options to their TRL law.[[14]](#endnote-14) As long as the tobacco retailers in the jurisdiction sell nontobacco products in addition to tobacco, and as long as the restriction applies to all signage (i.e., not just tobacco-related messages), the restriction should satisfy the First Amendment. The community should also demonstrate why such a restriction is necessary only for tobacco retailers (e.g., if tobacco retail outlets in the community have higher rates of robbery or increased incidences of public nuisance). For example, California Senate Committee hearings regarding the Lee Law legislation cited intensified “residential neighborhood nuisance problems associated with so-called ‘problem’ liquor stores” as a reason for regulating alcohol retailers.[[15]](#endnote-15)

If a community’s sole rationale for signage restrictions is to preserve aesthetics and reduce visual clutter (as opposed to increasing visibility into and out of the store and protecting public safety), it could expand the restriction to all signs visible from the store’s exterior, including those attached to the building’s front façade. For example, in its signage ordinance, Carmel-by-the Sea does not differentiate between the various types of business signs, and limits the number of exterior business signs to one, regardless of whether it is a window sign, exterior hanging sign, or a wall sign attached to the outside of the building.[[16]](#endnote-16) This Model Ordinance limits only window signage, since it relies on a public safety rationale in addition to an aesthetic rationale; however, communities should tailor the provisions to best address their particular needs.

Finally, public health advocates should partner with other community-based organizations and local planning departments concerned about public safety and neighborhood aesthetics. As discussed above, most signage laws are based on the desire to encourage attractive signage, reduce visual clutter, and protect public safety by ensuring visibility into retail stores. Such partnerships are therefore critical to achieving these objectives.

## **Conclusion**

Reducing storefront window signage and requiring an unobstructed view into stores would help address local concerns related to protecting public safety and preserving community aesthetics. This Model Ordinance is intended to equip local governments with the tools necessary to enact a storefront signage restriction that effectively serves these important local interests.

**AN ORDINANCE OF THE [ CITY / COUNTY ] OF [ \_\_\_\_ ] REDUCING STOREFRONT WINDOW SIGNAGE AND AMENDING THE [ \_\_\_\_ ] MUNICIPAL CODE**

The [ City Council of the City / Board of Supervisors of the County ] of [ \_\_\_\_ ] does ordain as follows:

**comment:** This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

**SECTION I. FINDINGS.** The [ City Council of the City / Board of Supervisors of the County ] of [ \_\_\_\_ ] hereby finds and declares as follows:

WHEREAS, ensuring that windows in retail stores are not blocked by signage assists law enforcement personnel in their crime-prevention efforts;[[17]](#endnote-17) and

WHEREAS, to prevent workplace violence, the U.S. Occupational Safety and Health Administration recommends that stores limit window signs so workers can see incoming customers and police have visibility from outside the establishment;[[18]](#endnote-18) and

WHEREAS, the location, number, and size of storefront signs within the [ City / County ] of [ \_\_\_\_ ] influence the [City’s / County’s ] visual environment, appeal, and character; and

WHEREAS, the appearance of the community is essential to the [ City / County ] of [ \_\_\_\_ ]’s long-term economic viability, aesthetic culture, and quality of life for its citizens; and

WHEREAS, excessive signage may create an overall image of blight and contribute to a reduction in property values and business in the surrounding areas.

**comment:** The findings contain factual information supporting the need for the law. The findings section is part of the ordinance and legislative record, but it usually does not become part of the law. The list included serves as an example; however, a community could provide additional findings of fact that support the purposes of the legislation (e.g., crime rates related to excessive signage in the community). It is important to note that these findings should be content neutral—that is, they should not refer to the content or message of the signs.

**SECTION II.** [ Article / Section ] of the [ \_\_\_\_ ] Municipal Code is hereby amended to read as follows:

**Sec. [ \_\_\_\_(\*1) ]. PURPOSE.**

The purpose of this [ article / chapter ] is to protect the health, safety, and welfare of the citizens of [ City / County ] of [ \_\_\_\_ ] by assisting law enforcement’s efforts to prevent crime and apprehend criminals, reducing neighborhood blight, and increasing economic vitality through improved aesthetic appeal.

**Sec. [ \_\_\_\_(\*2) ]. DEFINITIONS.**

The following words and phrases, whenever used in this [ article / chapter ], shall have the meanings defined in this section unless the context clearly requires otherwise:

**comment:** The definitions provided in this Model are intended to be suggestions. If applicable, communities should use the definitions set forth in their own planning code or conform these definitions to existing ones.

1. “Clear” means transparent.

(b) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(c) “Retail Store” means any business that offers to sell or exchange, for any form of consideration, products to a consumer.

**comment:** This Model Ordinance applies to all retail stores in a community. A number of existing regulations apply only to certain types of stores. For instance, California’s Lee Law applies only to off-premises alcohol outlets. As previously mentioned, Senate Committee hearings on Lee Law legislation pointed to increased neighborhood nuisance problems (including drug trafficking, public drinking, loitering, and public urination) specifically related to liquor stores. If a community wishes to adopt a similar restriction that applies only to certain types of retailers, it should have empirical evidence related to an important government interest to support that limited application.

**What is an “important government interest”?** Courts have generally recognized public safety, the reduction of visual clutter or neighborhood blight, and the preservation of property values or aesthetics as valid justifications for local signage regulations.[[19]](#endnote-19)

(d) “Signs” and “Signage” mean any words, lettering, figures, numerals, or images, which advertise, promote, or convey information about any business, product, activity, or interest.

(e) “Window” means any opening in the wall of a building that is fitted with glass or other transparent material.

**Sec. [ \_\_\_\_(\*3) ]. EXTERIOR SIGNAGE RESTRICTIONS.**

1. No more than 15 percent of the square footage of each Window and Clear door that is visible to the public from a public thoroughfare, sidewalk, or parking lot of any Retail Store shall bear Signs.

**comment:** When determining what constitutes a reasonable and allowable restriction on window signage, a community must ensure that a retailer’s ability to communicate will not be unduly restricted. The lower the percentage of allowable signage space, the greater the likelihood that the law will be considered overly restrictive, and overturned as a result. For example, it would be difficult for a local government to ban *all* signage. On the other hand, too great a percentage of allowable signage space defeats the law’s purpose.

California’s Lee Law limits window signage to 33 percent of the total square footage of windows. As discussed above, many other jurisdictions have adopted stricter window signage restrictions, ranging from 10 to 25 percent. The appropriate percentage for each community will vary; jurisdictions should tailor the restriction to address their needs.

Notably, the percentage applies *per* window (as opposed to the total square footage of all windows). A regulation that applies the percentage to each window prevents retailers from concentrating a much higher percentage of signage on its storefront windows than on windows that are not easily visible to the public (e.g., windows facing alleyways or on a top floor of a building).

**comment:** Communities that wish to base their ordinance purely on aesthetics may consider expanding the restriction to include all signs attached to the exterior of the building, and would need to tailor the language and provisions in this chapter accordingly.

1. The area covered by a Sign is calculated using the perimeter of the Sign and includes any Clear areas or spaces within the sign, such as the Clear area within a neon Sign. For irregularly shaped Signs, the area is that of the smallest rectangle that wholly contains the Sign.
2. For purposes of this section, Signs that are not physically attached to the Windows or Clear doors but that are visible from the exterior of the building in the same manner as if they were physically attached to the Windows or Clear doors shall constitute a Sign subject to subsection (a).
3. [ All Signs shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area where the cash registers are maintained, from the exterior public sidewalks, parking lots, or entrance to the premises. ]

**comment:** This optional provision would apply only if the community adopting a signage restriction is using a public safety rationale.

**Sec. [ \_\_\_\_(\*4) ]. IMPLEMENTATION AND ENFORCEMENT.**

1. The [ department / official ] shall implement, administer, and enforce this [ article / chapter ]. The [ department / official ] is hereby authorized to issue all rules and regulations consistent with this [ article / chapter ] and shall have all necessary powers to carry out the purpose of this [ article / chapter ]. The [ department / official ] shall have all necessary powers to enforce this [ article / chapter ].
2. In addition to any peace officer, the following classes of employees are authorized to issue citations for violation of this chapter: [ list classes of employees ].

**comment:** The subsections below are designed to offer a variety of enforcement options to the drafter and the enforcing agency. Drafters may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency will have discretion to choose which enforcement tools to use. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time.

In addition to, or in lieu of, the enforcement options discussed below, communities should use enforcement provisions within the municipal or county code to address violations of a storefront signage ordinance.

**Sec. [ \_\_\_\_(\*5) ]. CIVIL ENFORCEMENT BY INJUNCTIVE RELIEF.**

The [ City Attorney / County Counsel ] is hereby authorized to bring an action for injunctive relief to enjoin a violation of this [ article / chapter ].

**Sec. [ \_\_\_\_(\*6) ]. CIVIL ENFORCEMENT BY CIVIL PENALTIES.**

1. Any Person who violates this [ article / chapter ] may be liable for a civil penalty, not to exceed $[ 1,000 ] per violation for each day such violation is committed or permitted to continue.

**comment:** This provision provides civil fines for violating the ordinance. It requires that the city or county file a traditional civil suit. The fine amounts can be adjusted, but cannot exceed $1,000 per violation under Government Code section 36901.

1. The [ City Attorney / County Counsel ] may bring a civil action to recover civil penalties for the violations of this [ article / chapter ].
2. The [ City Attorney / County Counsel ] may seek recovery of the attorney’s fees and costs incurred in bringing a civil action pursuant to this section.

**Sec. [ \_\_\_\_(\*7) ]. ADMINISTRATIVE ENFORCEMENT AND PENALTIES.**

1. Any Person who violates any of the provisions of this [ article / chapter ] shall be subject to an administrative penalty not to exceed $[ \_\_\_\_\_\_ ] per day for each violation. Administrative penalties authorized by this section shall be assessed, enforced, and collected in accordance with section [ \_\_\_\_\_\_ ] of the [ \_\_\_\_ ] Municipal Code.
2. Where an officer or employee designated in this [ article / chapter ] determines that there has been a violation of any of the provisions of this section, the officer or employee may issue an administrative citation to the Person and/or entity responsible for the violation. For purposes of this section, the owner of the Retail Store is the Person responsible if an employee or agent of the Retail Store commits the violation.

**COMMENT:** Many jurisdictions already have an administrative citation provision in their municipal code. If this is the case, a jurisdiction can tailor this section to conform to the existing provisions. If none exists, the jurisdiction should extend subsection (b) to include additional language outlining the citation requirements:

“The citation shall inform the Person responsible of the date, time, place and nature of the violation and the amount of the proposed penalty, and shall state that the penalty is due and payable to the [ treasurer ] within [ \_\_\_\_ ] business days from the date of the notice, if not contested within the time period specified. The citation shall also state that the Person responsible has the right, pursuant to section [ \_\_\_\_ ] to request administrative review of the citing officer or employee's determination as to the violation and assessment of penalties, and shall set forth the procedure for requesting administrative review.”

**Sec. [ \_\_\_\_(\*8) ]. CRIMINAL ENFORCEMENT.**

Any Person who violates this [ article / chapter ] is guilty of a misdemeanor, punishable by a fine of not more than $[ \_\_\_\_\_\_\_ ] or by imprisonment in the [ city / county ] jail for a period of not more than [ \_\_\_\_\_\_\_\_\_ ], or by both such fines or imprisonment.

**COMMENT:** As previously mentioned, criminal enforcement is impractical and highly unlikely to be used. A community may instead wish to make the criminal sanction an infraction instead of a misdemeanor. It can do so by substituting the following provision for the language above: “Any Person who violates this [ article / chapter ] is guilty of an infraction, punishable by a fine of not more than $[ \_\_\_\_\_\_ ].”

**Sec. [ \_\_\_\_(\*9) ]. SEVERABILITY.**

If any section, sentence, clause, phrase, or portion of this [ article / chapter ] is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this [ article / chapter ] shall not be affected.

**COMMENT:** This is standard language. Often this boilerplate text is found at the end of an ordinance, but its location is irrelevant.

**SECTION III**. This act shall take effect and be in force from and after [ date ].

**COMMENT:** A community should provide Retail Stores ample time for implementation and compliance with the requirements set forth in this Model Ordinance. It would be unreasonable to require Retail Stores to comply immediately with the removal of excessive signage, particularly if the restriction is to serve aesthetic purposes (as opposed to more pertinent safety-related interests).

1. Barbara Lee is now a U.S. Representative for California’s 13th congressional district. [↑](#endnote-ref-2)
2. This includes grocery stores, liquor stores, and any other store that is licensed to sell alcohol for consumption away from the premises, but not restaurants or bars. Cal. Bus. & Prof. Code § 25612.5(a) (West, Westlaw through Ch. 2 of 2015 Reg. Sess.). [↑](#endnote-ref-3)
3. Cal. Bus. & Prof. Code § 25612.5(c)(7) (West, Westlaw through Ch. 2 of 2015 Reg. Sess.). [↑](#endnote-ref-4)
4. Specifically, the standard of proof is too high and violations of the Lee Law are not a criminal priority for district attorneys. [↑](#endnote-ref-5)
5. San Jose, Cal., Mun. Code § 23.02.1060 (2015); Santa Barbara, Cal., Mun. Code § 22.70.030(D) (2011). [↑](#endnote-ref-6)
6. Santa Clara, Cal., Ordinance Code § A18-369 (2014). [↑](#endnote-ref-7)
7. Los Angeles, Cal., Mun. Code § 4.4.14 (2014). [↑](#endnote-ref-8)
8. For example, Santa Clara County has an ordinance that limits storefront advertising on tobacco retailers’ windows to 15 percent of the square footage. Santa Clara, Cal., Ordinance Code § A18-369 (2014). [↑](#endnote-ref-9)
9. Cal. Bus. & Prof. Code § 25612.5(b) (West, Westlaw through Ch. 2 of 2015 Reg. Sess.). [↑](#endnote-ref-10)
10. In *Reed v. Town of Gilbert*, the Supreme Court struck down a town’s signage regulations because they treated signs differently based on their content. The regulations imposed more stringent restrictions on signs that directed the public to a non-profit group meeting than on signs conveying other messages. 576 US \_\_ (2015). Though this model ordinance primarily applies to advertising, which governments can traditionally regulate more freely than noncommercial speech, cities should still ensure that any signage restrictions remain content neutral. [↑](#footnote-ref-2)
11. *Lorillard v. Reilly*, 533 U.S. 525 (2001). [↑](#endnote-ref-11)
12. *See, e.g.*, *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). [↑](#endnote-ref-12)
13. As previously noted, cities and counties in California have adopted storefront signage restrictions that range from 10 percent, to 15 percent, to 25 percent of the window’s square footage. This Model uses the median of this range—15 percent—as the suggested allowable limit on signage. [↑](#endnote-ref-13)
14. ChangeLab Solutions has a model Plug-in for how this can be incorporated into a community’s TRL: *Model California Ordinance Requiring a Tobacco Retailer License: “Plug-in” Policy Options*, 2014. *www.changelabsolutions.org/publications/model-TRL-Ordinance*. [↑](#endnote-ref-14)
15. *Staff Analysis of Assembly Bill No. 2742 (Lee)*, Senate Committee on Governmental Organization, 1993-1994 Leg. Reg. Sess. (Ca. 1994). [↑](#endnote-ref-15)
16. Carmel-by-the-Sea, Cal., Mun. Code § 17.40 (2014). [↑](#endnote-ref-16)
17. One of the elements of the Crime Prevention Through Environmental Design (CPTED) model—which aims to reduce the risk for robbery by modifying the business environment—is natural surveillance and the ability to clearly see into and outside of a business. Jeffrey CR. *Crime Prevention Through Environmental Design*. Beverly Hills: Sage Publications, 1971. [↑](#endnote-ref-17)
18. Occupational Safety and Health Administration. *Recommendations for Workplace Violence Prevention in Programs in Late-Night Retail Establishments*. 2009, p. 9. [*www.osha.gov/Publications/osha3153.pdf*](http://www.osha.gov/Publications/osha3153.pdf)*.*  [↑](#endnote-ref-18)
19. *Metromedia Inc. v. City of San Diego*, 453 U.S. 490 (1981). [↑](#endnote-ref-19)